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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

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SEP 22
CHARLES ELMO

NO. 267, ~~MISCELLANEOUS~~

ALTON PARIS,
Petitioner

V.

THE STATE OF TEXAS,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Petitioner was charged by indictment (Tr. 3) and found guilty of murder with malice aforethought (Tr. 30) after a trial in the 87th District Court of Anderson County, Texas. He was sentenced to death by electrocution (Tr. 31). Upon appeal to the Court of

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Criminal Appeals of Texas, the conviction was affirmed.[1]

Here the petitioner seeks to invoke the jurisdiction of this Court on the ground of the admission of an allegedly involuntary confession into the evidence at his trial. Because of this, he asserts that he was denied due process of law.

However, it will be demonstrated below that the confession in question was voluntarily made. Petitioner makes no complaint of physical mistreatment. The only suggestion of coercive action is petitioner's allegation that he was threatened with mob violence, and this was emphatically denied by the person who purportedly made the threat. Thus in the absence of undisputed evidence of coercion, the only complaint left open to petitioner is the fact that he confessed his guilt before he was formally charged with the crime, but it is clear from recent decisions of this Court that a confession made under these circumstances is admissible in a state criminal trial.

The petitioner has been extended every constitutional and statutory privilege to which one charged with a capital offense is entitled. The issue of the voluntariness of a confession is one of fact, and

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1. Paris v. State, 249 S.W.2d 217 (Tex. Crim. 1952).

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if the evidence produced is in conflict it should be resolved by a jury acting under a proper instruction from the court. Such was the procedure followed in the trial of this case, and the question of coercion was decided adversely to the petitioner.

STATEMENT OF THE CASE

The facts concerning the offense itself are of little importance to a determination of the issues presented here and may be found in detail on pages 217 and 218 of the opinion below. Suffice it to say that petitioner shot and killed one Gus Engeling, a wild life biologist employed by the State Game and Fish Commission, who surprised him in the act of poaching on a State game preserve. It is interesting to note that petitioner, who testified in his own behalf, did not deny that he shot the biologist. In his confession he stated that, being pursued by the deceased, he suddenly whirled his gun around and shot him.[2] In his testimony at the trial, however, he claimed that his gun discharged accidentally and that he was unaware that the deceased had been hit (S.F. 88-90; S.F.M.Q. 25, 26).

The deceased was killed on Thursday morning, December 13, 1951, although his body was not discover-

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2. Petitioner's confession may be found on pages 72-72d of the Statement of Facts.

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[illegible] until the following Sunday. On Thursday afternoon several officers came to petitioner's home and questioned him concerning his activities earlier in the day (S.F.M.Q. 8). The officers soon left but returned later and took petitioner to the county jail (S.F.M.Q. 9), where he apparently agreed to spend the night (S.F. M.Q. 75). The next morning he accompanied the officers to the game preserve to assist in a search for the missing biologist and after a fruitless effort he was released and returned to his home (S.F.M.Q. 10, 11). Petitioner testified that he deliberately misled the officers on this search. Instead of taking them to the scene of the crime, he directed them to another place, of some distance from where the body was eventually found (S.F.M.Q. 43, 44).

After the expedition to the game preserve, petitioner was released and he returned to his home. But later in the day he was again picked up and spent Friday night in jail (S.F.M.Q. 11). On Saturday morning he was taken to Austin for a lie detector test and returned to Palestine on the same day. He spent Saturday night in the Anderson County jail (S.F.M.Q. 13-15), and on Sunday morning he was visited by an attorney who had been employed by his sister (S.F. 114). He confessed his guilt on Sunday afternoon in the presence of the County Attorney, the Sheriff, and several disin-

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terested witnesses (S.F. 106; S.F.M.Q. 17, 18). The petitioner himself admitted that he was duly warned that any statement he might make could be held against him at his trial and denied that he was offered any delusive hope of leniency in exchange for his confession[3] (S.F. 106, 115), and this is confirmed by others who were present when the confession was made (S.F. 70, 121, 123, 131).

It is admitted in the petition for certiorari and brief in support that petitioner was not the victim of cruel or brutal treatment. On the contrary, he himself testified that he was well treated during his confinement (S.F. 101; S.F.M.Q. 57, 64). The only evidence of coercion is petitioner's testimony that Sheriff Roy Herrington told him that "he would let the mob get me if I did not tell the truth." (S.F. 101). The Sheriff flatly denied making any such threat (S.F. 116; S.F.M.Q. 72, 73). According to his testimony, "there was not a word mentioned about a mob." (S.F. 116).

What really prompted petitioner to confess was the fact that a pair of his glasses were found at the scene of the crime after the discovery of the body. The Sheriff showed the glasses to petitioner and in-

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3. In accordance with Article 727, Texas Code of Criminal Procedure (Vernon 1948), reproduced in the appendix, page 16.

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ormed him that they had been identified as his. lthough petitioner denies that this influenced im to make his statement (S.F. 104, 105), it was the heriff's opinion that it was the deciding factor S.F. 115, 116). The fact remains that he decided o confess shortly after he was confronted with his ost glasses.

POINT ONE

The admission of petitioner's confession nto the evidence at his trial did not deny him due rocess of law.

ARGUMENT AND AUTHORITIES

The admission of an involuntary confession nto the evidence against an accused denies him due rocess of law.[4] Both this Court and the Texas Court f Criminal Appeals properly abhor coerced confessions,

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4. Harris v. South Carolina, 338 U.S. 68 (1949); urner v. Pennsylvania, 338 U.S. 62 (1949); Watts v. ndiana, 338 U.S. 49 (1949); Haley v. Ohio, 332 U.S. 96 (1947); Malinski v. New York, 324 U.S. 401 (1945); shcraft v. Tennessee, 322 U.S. 143 (1944); Ward v. exas, 316 U.S. 547 (1942); Vernon v. Alabama, 313 U.S. 547 (1941); Lomax v. Texas, 313 U.S. 544 (1941); hite v. Texas, 310 U.S. 530 (1940); Canty v. Alabama, 309 U.S. 629 (1940); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).

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and a Texas statute[5] allows a confession to be used in evidence only if made freely and without compulsion. Another Texas statute[6] renders inadmissible evidence obtained in violation of the Constitution of the United States, and the Court of Criminal Appeals has never hesitated to reverse a conviction where the undisputed facts show that the accused was compelled to confess his guilt.[7] An examination of the cases cited in the preceding footnote clearly reveals that the Texas Court is guided to its conclusions by the pertinent decisions of the Supreme Court of the United States.

In Texas the initial question of the admissibility of a confession is for the determination of the court. But when there is raised an issue of fact respecting its voluntariness, the question must be submitted to the jury under appropriate instructions. A verdict of guilty thus constitutes a finding that the

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5. Article 726, Texas Code of Criminal Procedure (Vernon 1948), reproduced in the appendix, page 16.

6. Article 727a, Texas Code of Criminal Procedure (Vernon 1948), reproduced in the appendix, page .

7. Prince v. State, 231 S.W.2d 419 (Tex. Crim. 1950); Colley v. State, 158 S.W.2d 1014 (Tex. Crim. 1942); Abston v. State, 139 Tex. Crim. 416, 141 S.W. 2d 337 (1940).

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confession was voluntarily made. The circumstances surrounding a prisoner's confession will also be examined by this Court. In ruling upon the admissibility of a confession in terms of due process of law, this Court predicates its conclusions upon an independent examination of the undisputed facts in the record.[9]

In the instant proceeding, there is practically no dispute as to the circumstances under which petitioner made his confession. In both his petition for certiorari and in his testimony at the trial, he has admitted that he was treated with consideration. His only complaint of coercive action is his statement that Sheriff Herrington threatened to turn him over to a nonexistent mob. This was denied by the Sheriff and thus the issue passed out of the case with the jury's verdict.

In view of the absence of further evidence of an inherently coercive situation, the cases upon which petitioner relies[10] can hardly be considered to be in point. A brief examination of the facts of

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8. Gipson v. State, 147 Tex. Crim. 428, 181 S.W. 2d 76 (1944); Taylor v. State, 141 Tex. Crim. 212, 147 S.W.2d 800 (1941); Cantu v. State, 141 Tex. Crim. 99, 135 S.W.2d 705 (1940); Stewart v. State, 124 Tex. Crim. 632, 64 S.W.2d 782 (1933).

9. Citations at note 4, supra.

10. Ward v. Texas, 316 U.S. 547 (1942); White v. Texas, 310 U.S. 530 (1940); Chambers v. Florida, 309 U.S. 227 (1940).

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these cases discloses that each reversal was predicated upon circumstances which are in no way comparable to those upon which petitioner places reliance in this proceeding.

In the Ward case it was undisputed that the accused was slapped by a constable at least once and that he remained in the custody of that officer for some time thereafter. Moreover, he was taken from jail to jail, from one strange town to another, for a period of three days, for no apparent reason except to frighten and intimidate him. These movements took the defendant farther and farther from the scene of the crime, and when the confession was finally obtained, he and his custodians were at a point some 110 miles distant.[11]

In the White case, the defendant was repeatedly taken out of jail on nightly trips "out on the road" and "off of the road" into the woods for interrogation. A local peace officer testified that he was removed from jail in this manner so many times that the exact number could not be recalled.[12] In the Chambers case the petitioners were subjected to five days of protracted ques-

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11. 316 U.S. 550, 551.

12. 310 U.S. 532, 533.

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tioning, "under circumstances that were calculated to break the strongest nerves and the stoutest resistance." After steadfastly asserting their innocence during all this time, they finally broke down and confessed after an all night interrogation.[13]

A glance at the record in this case reveals no such mistreatment, intimidation, or abuse to which the petitioners in the foregoing cases were subjected. The petitioner here does not claim that he was subjected to protracted questioning, or "grilling." He apparently gave his consent to go to Austin and take a lie detector test (S.F.M.Q. 75), and he repeatedly testified that he was treated well while in the custody of the local authorities. He even conferred with an attorney before he made his confession (S.F. 114). And surely there is nothing unconstitutionally coercive in the confrontation of petitioner with a pair of his lost glasses which were discovered at the scene of the crime.

It would be useless for the purposes of this brief to gather together all of the cases in which certiorari has been denied petitioners who have raised this type of attack upon their respective convictions. The vast majority of cases in which unsuccessful complaints of coerced confessions were presented have doubtless been disposed of in this manner. However,

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13. 309 U.S. 238, 239.

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there are several recent decisions in which this Court has affirmed such convictions with written opinions.[14] In each one of these cases there was presented a much stronger argument for reversal than that which is raised in the instant proceeding.

In the absence of undisputed evidence or even a strong allegation of coercion, the only complaint left open to petitioner is the fact that his confession was made before formal charges were filed against him.[15] A confession obtained under these circumstances is, of course, inadmissible in a federal trial.[16] But this so-called rule of the McNabb case does not limit the power of a state court to admit or exclude evidence. The court

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14. Stroble v. California, 72 S.Ct. 599 (1952); Gallegos v. Nebraska, 72 S.Ct. 141 (1951); Lyons v. Oklahoma, 322 U.S. 596 (1944); Lisenba v. California, 314 U.S. 219 (1941).

15. Article 217, Texas Code of Criminal Procedure (Vernon 1948), reads as follows:

> "In each case enumerated in this chapter, the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made without an order."

16. Upshaw v. United States, 335 U.S. 410 (1948); McNabb v. United States, 318 U.S. 332 (1943).

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made that clear in the McNabb case itself,[17] and petitioner admits in his brief that the rule is applicable only to cases arising in the federal courts. Texas has specifically rejected this doctrine and holds that a confession made before charges are filed must be excluded only if there is a causal connection between the failure to file a complaint and the securing of the confession.[18] The Court of Criminal Appeals failed to find any such causal connection in the case at bar.

Any question as to the applicability of the McNabb rule to state criminal trials was conclusively settled by this Court in its recent decision in Gallegos v. Nebraska.[19] There the accused, a Mexican farm hand who could neither read nor write English, was illegally detained for 25 days, and during the course of this detention he confessed to the slaying of his paramour. However, there was no undisputed evidence of coercion, so it was held that the issue of federal due process was not presented. Petitioner has attempted to distinguish this case from the instant proceeding, but this may be refuted simply by a restatement of the Court's own view of the issue which was decided there,

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17. 318 U.S. at p. 340.

18. Shook v. State, 244 S.W.2d 220 (1951); Dimery v. State, 240 S.W.2d 293 (Tex. Crim. 1951).

19. 72 S.Ct. 141 (1951).

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as follows:

> "'Are the confessions and a plea obtained from a prisoner during a period of twenty-five days illegal detention by federal and state officers before being brought before a magistrate and before counsel is appointed to assist the prisoner admissible in evidence?'"[20]

In other words, does the mere fact of illegal detention alone so taint a confession as to render it inadmissible in evidence against the confessor? This is precisely the question which is presented to the Court for determination in this proceeding, and petitioner's attempt to distinguish the Gallegos case is without merit. The distinction is apparently based upon a variance in the reasons responsible for the detention in each case. Here the petitioner was held pursuant to an investigation of the crime to which he confessed guilt, while in the Gallegos case he was held in connection with another matter. But the fact remains that there the accused was held for 25 days before being allowed to see an attorney. Here he was held for only four days, and he was allowed to confer with an attorney before he made his confession. To exclude the confession in the instant proceeding after the holding the one used in the trial of the Gallegos case admissible would certainly be inconsistent.

It is admitted that the officers acted illegally in holding the petitioner for four days before charging

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20. 72 S.Ct. 144.

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him with the crime. But this alone is insufficient to render inadmissible a confession obtained under such circumstances. In a case in which the petitioner presented much stronger grounds for reversal than those upon which reliance is placed in this proceeding, this Court, in affirming the conviction, made the following statement:

> ". . . illegal acts, as such, committed in the course of obtaining a confession, whatever their effect on its admissibility under local law, do not furnish an answer to the constitutional question which we must decide. . . ."[21]

"A criminal prosecution approved by the state should not be set aside as violative of due process without clear proof that such drastic action is required to protect federal constitutional rights."[22] Such drastic action is not required here. Acting under an instruction to find petitioner not guilty if it had any reason to believe that his confession was not voluntarily made (Tr. 26, 27), the jury found him guilty as charged. Thus the issue of coercion has already been resolved against him, and the mere fact that the confession was made while petitioner was in the custody of the police does not render it inadmissible.

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21. Lisenba v. California, supra, p. 235.

22. Gallegos v. Nebraska, supra, p. 145.

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Due process of law, as applied to a criminal trial, requires only that fundamental fairness which is essential to our basic concepts of justice. It is respectfully submitted that no such fundamental principle of justice was violated during the trial of this proceeding.

CONCLUSION

It is respectfully submitted that this case is not a proper one for review by this Court and that the petition for writ of certiorari should be denied.

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September, 1952

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APPENDIX

TEXAS STATUTES REGARDING CONFESSIONS

Texas Code of Criminal Procedure (Vernon 1948):

Article 726. Confession.

"The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed."

Article 727. When confession shall not be used.

"The confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him; which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed. If the defendant is unable to write his name, and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness."

Article 727a. Evidence not to be used.

"No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case."

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